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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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In re KAELYN B., a Person Coming  
Under the Juvenile Court Law.

BUTTE COUNTY DEPARTMENT OF  
EMPLOYMENT AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.B. et al.,

Defendants and Appellants.

C068138

(Super. Ct. No. J34267)

J.B. and Kirk B., parents of the minor, appeal from orders of the juvenile court terminating their parental rights. (Welf. & Inst. Code, §§ 366, 395.)<sup>1</sup> Parents contend the court erred in failing to apply the sibling exception to defeat termination of parental rights and should have ordered a post-termination sibling contact agreement. Parents have forfeited both contentions on appeal by failing to raise the issues in the

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

juvenile court. With regard to the post-termination sibling contact agreement, the issue is premature because such a contact order, if any, shall be made at the time of adoption, not termination of parental rights. For these reasons, we affirm.

#### FACTS

The three-year-old minor and her seven-year-old brother were removed from parental custody in September 2009 due to mother's substance abuse and domestic violence and father's homelessness and mental health issues. The juvenile court ordered family reunification services for the parents.

The minor and her sibling were initially placed together but, nine months after removal, the sibling's behavioral issues made it necessary to move him to a new placement where he was more stable. By the 12-month review report, the social worker recommended termination of reunification services and setting a section 366.26 hearing. The juvenile court adopted the recommendation, terminating services in November 2010.

The assessment for the section 366.26 hearing concluded the minor and her sibling were adoptable but difficult to place and requested a continuance for homefinding. An addendum to the assessment stated the minor's caretaker was now interested in adoption and recommended termination of parental rights to permit her adoption in a stable placement. The addendum stated the minor's sibling was moving to a new placement but the minor's prospective adoptive parent remained open to continuing contact between the siblings.

The section 366.26 hearing was set for a contested hearing on March 10, 2011. At that hearing, there was discussion of a designated relinquishment of parental rights and the hearing was continued. The matter was again heard on March 29, 2011. Neither parent appeared. Counsel for each parent entered a general objection to termination of parental rights. The juvenile court terminated parental rights, freeing the minor for adoption.

## DISCUSSION

### I

#### *Sibling Exception*

Parents contend the juvenile court erred in failing to apply the sibling exception to defeat the preference for adoption as a permanent plan.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several “possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]” [Citations.]’ If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) There are only limited circumstances that permit the court to find a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

The party claiming that termination of parental rights would be detrimental has the burden of establishing the

existence of any circumstances that constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 5.725(e)(3); Evid. Code, § 500.)

Termination of parental rights may be avoided when the termination would substantially interfere with the adoptive child's sibling relationship. (§ 366.26, (c)(1)(B)(v).) To show that adoption would interfere with a sibling relationship, the party asserting the exception must establish the factual predicate of the nature and extent of the sibling relationship by substantial evidence. The court then exercises its discretion in weighing the adoptive child's interest in the sibling relationship against the benefit to the adoptive child of legal permanence through adoption. (§ 366.26, subd. (c)(1)(B)(v); *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re Celine R.* (2003) 31 Cal.4th 45, 49-50.)

The facts to support this, or any exception, may be taken in whole, or in part, from the social worker's report and the party need not put on additional evidence. Nonetheless, the party must, at the very least, raise the issue in the juvenile court, permit the other parties to respond with evidence and argument, and provide the court the opportunity to rule.

At the February 1, 2011, hearing setting the section 366.26 hearing, mother's counsel did suggest that the sibling relationship might be at issue at the contested hearing. However, no trial brief was filed and, by the March 10, 2011,

section 366.26 hearing, mother's counsel was discussing the possibility of a designated relinquishment. At the request of the parents, the juvenile court set a further hearing. Neither parent appeared at the next hearing on March 29, 2011, and counsel for each parent simply entered a general objection to termination of parental rights without further argument or evidence. This meager record cannot be said to constitute an effort to place the sibling exception at issue. Parents have forfeited the argument on appeal by failing to assert it in the juvenile court. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502; *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

## II

### *Post-Termination Sibling Contact Agreement*

Parents further contend the juvenile court should have ordered a post-termination sibling contact agreement. We disagree.

Post-termination sibling contact agreements are authorized by section 366.29, which states, in relevant part: "With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact. In no event shall the continuing validity of the adoption be contingent upon the postadoptive contact, nor shall the ability of the adoptive parent or parents and the child to change residence within or outside the state be impaired by the order for contact." (§ 366.29, subd. (a).)

It is clear from the statute that the contact order, if any, is to be made at the time of *adoption*, not termination of parental rights. The request for such an order at this time is premature.

Moreover, parents did not raise this issue in the juvenile court and have forfeited the opportunity to argue it on appeal. (*In re Christopher B.*, *supra*, 43 Cal.App.4th at p. 558; *In re Dakota S.*, *supra*, 85 Cal.App.4th at pp. 501-502; *In re S.B.*, *supra*, 32 Cal.4th at p. 1293, fn. 2.)

DISPOSITION

The orders of the juvenile court are affirmed.

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HOCH, J.

We concur:

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RAYE, P. J.

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MAURO, J.